

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR08-331

OLIVER LEAK, JR.

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered OCTOBER 22, 2008

APPEAL FROM THE ASHLEY
COUNTY CIRCUIT COURT,
[NO. CR-2006-199-4]

HONORABLE DON E. GLOVER,
JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

Appellant Oliver Leak, Jr., appeals his August 16, 2007 conviction by an Ashley County jury on charges of battery in the first degree and felon in possession of a firearm, for which he was sentenced to ten years in the Arkansas Department of Correction on the battery charge, plus a five-year suspended imposition of sentence on the felon-in-possession charge. He challenges the sufficiency of the evidence, specifically arguing that the State failed to present substantial evidence of his identity as the individual who fired the shot that injured the victim during the shooting incident in question. Based upon the testimony offered by an eyewitness, as well as the victim himself, we affirm.

The State filed a felony information on December 7, 2006, alleging that appellant committed the offenses of battery in the first degree and felon in possession of a firearm, on or about October 22, 2006, against victim Dennis Williams. The charges arose from a report that on that date appellant drove his car to a residence located at 203 Kentucky Street,

Crossett, Arkansas, for the purpose of loaning money to an individual named Rufus Minnieweather. As appellant was leaving the home, a verbal altercation occurred between appellant and Dennis Williams, who was standing on the porch of the residence. Appellant left the scene in his vehicle, but returned approximately ten minutes later. He exited his car, exchanged additional words with Williams, then reached in the car, retrieved a pistol, and fired three shots at Williams. At that time, Williams charged appellant and, with assistance from Phillip Minnieweather,¹ managed to take the pistol away from appellant. A fight then broke out among the individuals, which resulted in appellant being injured and fleeing from the scene on foot.

At the time appellant left the scene, Williams realized he had been shot in the right hand and left thigh, and he was taken to the hospital. Subsequently, appellant was also taken to the hospital by his friend, Sammy Lee Tharpe, who lived near the residence where the shooting occurred. Williams and others from the scene identified appellant at the hospital as the shooter, and investigating officers promptly arrested appellant.

A jury trial was held on August 15, 2007. The victim, Dennis Williams, and Phillip Minnieweather, an eyewitness, testified for the State. The State also presented evidence from Officer Matt Brooks and Trooper David Tumey, both of whom were involved in the investigation of the incident. At the close of the State's case in chief, appellant moved for a directed verdict on all charges based upon insufficient evidence that appellant caused the injuries to Williams by means of a weapon. The circuit court denied the motion.

¹Phillip is the son of Rufus Minnieweather, and he was at his parents' residence where and when the incident took place.

Appellant testified on his own behalf, arguing that he did not have a gun and, in fact, was the one attacked in an attempted robbery while simply trying to walk back to his vehicle. Sammy Lee Tharpe testified that appellant came to his house on the day of the incident, badly beaten, and explained that he took appellant to the emergency room. Appellant's counsel then renewed the motion for directed verdict, and it was also denied by the circuit court. The State called Trooper Tumey as a rebuttal witness, after which appellant's counsel once again renewed the motion for directed verdict. The final renewal of the motion likewise was denied.

The jury returned a guilty verdict, and appellant was sentenced as previously set forth. A judgment and commitment order was entered on August 16, 2007, and appellant filed a timely notice of appeal on August 29, 2007.

Standard of Review

In reviewing a challenge to the sufficiency of the evidence, we determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Dunn v. State*, 371 Ark. 140, ___ S.W.3d ___ (2007). Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resorting to speculation or conjecture. *Id.* In reviewing a challenge to the sufficiency of the evidence, this court views the evidence in the light most favorable to the State. *May v. State*, 94 Ark. App. 202, 228 S.W.3d 517 (2006). This court does not pass upon the credibility of witnesses who testify at trial, nor does it resolve conflicts in the testimony, as those are matters solely for the jury's determination. *Barrett v. State*, 354 Ark. 187, 119 S.W.3d 485 (2003).

Discussion

Appellant acknowledges that, at trial, he neither denied being present at the residence and being involved in an altercation while there, nor disputed that Dennis Williams had been injured by means of a firearm. The only issue in this case is whether the State presented substantial evidence that appellant was the individual who inflicted that injury. Appellant claims the State did not, yet acknowledges that the only evidence directly connecting him with the shooting was the testimony of the victim and another eyewitness. We hold that evidence is enough.

The State presented testimony from eyewitness Phillip Minnieweather, who testified that appellant drew a gun from inside his vehicle and began shooting at Williams. Additionally, Williams himself corroborated that testimony, specifically linking appellant to the gun and to the actual shooting.

Appellant points out that Officer Brooks described the injuries incurred by both Williams and appellant. Officer Brooks additionally testified that the firearm apparently fired at Williams was recovered from Williams's car, and nothing in his testimony tied appellant to the firearm. Trooper Tumey provided testimony regarding the collection of evidence from the crime scene. That evidence consisted primarily of photographs of the firearm, blood stains on and in the vehicle(s), a blood-stained cap belonging to appellant, and blood stains on the ground at the scene. Trooper Tumey acknowledged that no finger-print analysis was ordered on the weapon; likewise, no DNA testing was done on the blood at the scene. Trooper Tumey also indicated that the weapons check on the firearm through ACIC indicated that

the gun was not stolen; however, he could not say to whom the gun belonged, other than to rely on the statements of Williams and Minnieweather.

Appellant maintains that there did not appear to be any attempt on the part of the officers to investigate the veracity of his allegation that he was beaten during an attempted robbery. Minnieweather, who conceded that he was a convicted felon, testified that he was aware that appellant, a good friend of his father, often came to their house to loan money to his father. Appellant reiterates that he was at the residence on the date in question for that express purpose. He notes that Minnieweather testified that his father kicked him out of the house after the incident, and when asked why, responded only, “[b]ecause of the confrontation.” Appellant raises the question of why Minnieweather’s father would have kicked him out for something he did not cause.

Additionally, appellant also explains the extent of the injury he incurred during the incident, which was serious enough to require four stitches at the hospital. That description was corroborated by the testimony of Tharpe, who drove appellant to the hospital. Appellant maintains that further investigation of the incident was warranted based upon his allegations, which conflicted with those of Williams and the others at the scene. Appellant contends that, because Williams and the others arrived at the emergency room first, the officers were more willing to believe their version of what happened despite any evidence to the contrary provided by him. He further asserts that no evidence collected by the police conclusively proved Williams’s and the others’ version of the incident. As a result, he asks the court to find that there was not sufficient evidence to support his conviction.

The State responds that the testimony from two eyewitnesses, Williams and Minnieweather, who both specifically and unequivocally indicated that appellant was the person who shot Williams, constitutes substantial evidence that supports the conviction. We agree. Appellant does not, and could not, dispute that such evidence was presented to the jury. Rather, he merely questions the veracity of the witnesses and the thoroughness of the police investigation.

Appellant's entire appeal is based upon a challenge to the credibility of the witnesses and matters of the weight to be given the evidence. These are matters that are solely within the province of the jury. See *Winston v. State*, 368 Ark. 105, 243 S.W.3d 304 (2006). As the verdict clearly indicates, the jury chose to believe the testimony of Williams and Minnieweather over appellant. Such was their prerogative, and this court will not second-guess those findings. See *Kirwan v. State*, 351 Ark. 603, 96 S.W.3d 724 (2003). As previously stated by our supreme court, to engage in a review of such matters would constitute an invasion of the jury's province and would, in essence, "constitute a second trial on the issue, with this court, rather than the jury, evaluating the credibility of witnesses and weighing the evidence." *Navarro v. State*, 371 Ark. 179, 192, ___ S.W.3d ___, ___ (2007). Because substantial evidence supports the jury's determination that appellant purposely shot and injured Williams, we affirm.

Affirmed.

HART and HEFFLEY, JJ., agree.